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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/657,154	09/07/2000	Shun Nakamura	K6510.0055/P055	9966
24998	7590	04/04/2006	EXAMINER	
DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP			NGUYEN, KIM T	
2101 L Street, NW			ART UNIT	
Washington, DC 20037			PAPER NUMBER	
			3713	

DATE MAILED: 04/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# 'Office Action Summary

Application No.

09/657,154

Applicant(s)

NAKAMURA ET AL.

Examiner

Kim T. Nguyen

Art Unit

3713

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 8-16, 18-21, 38-40, 44-49 and 52-57 is/are pending in the application.
- 4a) Of the above claim(s) 8-16, 18-21 and 38-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 44-49 and 52-57 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Examiner acknowledges receipt of the RCE on 1/17/06 filed with the amendment on 12/15/05. According to the amendment, applicant elects species 3, claims 44-49 and 53-56 with traverse, and adds new claim 57. Accordingly, claims 44-49, 52-57 are examined in this office action, claims 8-16, 18-21, 38-40 are withdrawn from consideration as being directed to non-elected species, and claims 8-16, 18-21, 38-40, 44-49 and 52-57 are pending in the application.

### ***Claim Objections***

- a) In claims 8-16, 18-21, 38-40, the status identifier "(Previously presented)" should be corrected to "(withdrawn)", because claims 8-16, 18-21, 38-40 have been withdrawn from consideration as being directed to non-elected species.
- b) In claim 44, line 10, the claimed limitation "a prescribed position" should be corrected to "the prescribed position".

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**2. Claims 44-49 and 53-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lipps et al (US 5,741,182) in view of Fenner et al (US 5,009,501) and Suzuki et al (US 6,227,968).**

As per claim 44, Lipps discloses a game apparatus comprising an operation device 4 (Fig. 1); a position detector detecting light from the bat (col. 1, lines 45-47 and col. 2, lines 56-58) at a plurality of positions (Fig. 2; ref 47); and a display unit 3 (Fig. 1) for issuing a prescribed operation to a game player and determining correctness of player device operation (col. 3, lines 5-12). Lipps does not disclose capturing successive spatial positions of an operation device to create a trace of the operation device movements. Fenner discloses a remotely controllable position indicator system that uses light emitters and detectors to determine movement and orientation of objects (Abstract). Fenner discloses the system as a remotely hand held implement (col. 1, lines 22-23) with transmitter and receiver pairs to form a number of planes used to determine 3-D spatial reference with respect to the hand held implements (col. 1, lines 59-67 and col. 2, lines 37-48). Thus Fenner discloses that successive spatial positions are used to detect the movement of the operation device. Fenner envisions the system to be used for a plurality of applications such as detecting relative locations of players in a game and for interacting with images on a video screen (col. 1, lines 1-20). One would be motivated to use the 3-D spatial detection system taught by Fenner because such a system can increase the accuracy of the position detection system thus providing a player with better simulation and analysis of player performance (Lipps, col. 1, lines 25-55). Therefore, it would have been obvious to one

of ordinary skill in the art at the time the invention was made to modify Lipps to use the 3-D spatial detection system taught by Fenner so that an increase in detection accuracy can provide better game simulation and analysis for a player. Further, Lipps in view of Fenner does not disclose a command mark with a command of a specific operation. However, Suzuki teaches a game machine including a display unit for displaying a plurality command marks (e.g. S1-S4) indicating different operations (e.g. left, down, up or right stepping) at a single prescribed position (e.g. at the bottom end on the display surface) (Figs. 7-8). Suzuki further teaches that musical rhythm is integrated with the game command marks, where the commands indicate a position a player needs to take (col. 16, line 9 through col. 17, line 8). Lipps in view of Fenner and Suzuki are related as game machines capturing moves of a user, wherein game computer judges move correctness. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Lipps in view of Fenner and include a specific command operation with the command mark taught by Suzuki so that a player attempting to associate correct moves with specific pitches can be told what type of pitches was being displayed.

As per claim 45-49 and 53-55, refer to discussion in claim 44 above.

**3. Claims 52 and 56-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lipps et al (US 5,741,182) in view of Fenner et al (US 5,009,501).**

As per claim 52 and 56-57, refer to discussion in claim 44 above. Further, regarding to claims 52 and 56, since Lipps discloses including a game machine 1 (Fig. 2) in the game system (col. 3, lines 13-17; and col. 6, line 4), Lipps obviously encompasses including a control unit for controlling a game as claimed.

### ***Response to Arguments***

4. Applicant's arguments filed 12/15/05 have been fully considered but they are not persuasive.

a) In response to applicant's argument in page 18, from third paragraph through page 19, first paragraph, regarding to the applicant's election with traverse of species 3. The traversal is on the ground(s) that no undue burden would be involved in examining all the claims together because examination of the claims of species 3 will necessarily include a search and examination of subject matter included in the species 1 and 2. This is not found persuasive because species 1 drawn to providing moving command marks and species 2 drawn to providing a pose command, whereas species 3 drawn to providing commands in accordance with a rhythm of music. The three species require different search, serious burden of the search and examination would be imposed to the examiner should all the species were examined. The requirement is still deemed proper and is therefore made FINAL.

In consideration the generic claims 52 and 56 and the newly added claim 57, it is determined that claims 52 and 56-57 are considered generic to all species. Accordingly, the elected species 3, claims 44-49 and 53-55, with generic claims 52 and 56-57 are examined in this office action.

b) In response to applicant's argument in page 20, fifth paragraph through page 21, lines 1-10, Suzuki discloses displaying a plurality of command marks (e.g. S1 to S4) indicating different commands (left, down, up or right stepping) at one prescribed position (e.g. at the bottom end on the display surface) (Figs. 7-8) (col. 8, lines 47-52) as claimed. The independent claims fail to highlight the difference between displaying command marks at a single prescribed position of the present application and displaying command marks at the bottom end on the display surface disclosed by Suzuki.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim Nguyen whose telephone number is 571-272-4441. The examiner can normally be reached on Monday-Thursday during business hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai, can be reached on 571-272-7147. The central official fax number for the organization where this application or proceeding is assigned is 571-273-8300.

kn  
Date: March 30, 2006



Kim Nguyen  
Primary Examiner  
Art Unit 3713